

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK WILLIAM KRUTHOFF,

Petitioner,

v.

CASE NO. 04-CV-72962-DT
HONORABLE NANCY G. EDMUNDS

THOMAS BELL,

Respondent.

ORDER AFTER REMAND REOPENING TIME TO FILE APPEAL

This matter is before the Court on remand from the United States Court of Appeals for the Sixth Circuit for the limited purpose of considering Petitioner's motion for extension of time as a Federal Rule of Appellate Procedure 4(a)(6) motion to reopen the appeal period. The Court denied Petitioner's habeas petition on October 12, 2005. Petitioner dated his motion for extension of time on November 29, 2005 and sought additional time to file his notice of appeal and request a certificate of appealability because he did not timely receive a copy of the Court's dismissal order due to several prison transfers and the delay in receiving forwarded mail.

Fed. R. App. P. 4(a)(6) provides:

The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appeal from within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

Fed. R. App. P. 4(a)(6).

The Court finds that Petitioner has satisfied these requirements. First, his pleadings indicate that he did not receive notice of the Court's October 12, 2005 decision until Thanksgiving, 2005. Second, Petitioner dated his motion for extension of time on November 29, 2005, within 7 days after he received notice of the Court's decision. Third, the Court finds that no party would be prejudiced by the brief delay in this case. The Court therefore grants Petitioner's request to reopen the time to file an appeal pursuant to Federal Rule of Appellate Procedure 4(a)(6). Petitioner would normally have 14 days from the entry of this order to submit his notice of appeal. He has, however, already done so. Petitioner filed a notice of appeal, a motion for a certificate of appealability, and a motion to proceed *in forma pauperis* on appeal on January 17, 2006. Accordingly, the Court finds that Petitioner's appeal is timely.

IT IS SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: June 20, 2006

I hereby certify that a copy of the foregoing document was served upon counsel of record on June 20, 2006, by electronic and/or ordinary mail.

s/Carol A. Hemeyer
Case Manager